

EXHIBIT D

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HITUL GANDHI, Individually,)
and on behalf of a class)
of others similarly situated,)
)
)
Plaintiff,)
v.) Case No.
) 1:08cv-00248-SS
DELL INC.,)
and)
DELL MARKETING USA L.P.,)
)
Defendants.)
)

DEPOSITION OF:

JOSHUA BARKER

Taken on Behalf of the Defendants

November 3, 2007

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1 Q. So you never actually worked for
2 Spherion?

3 A. No, never did.

4 Q. And you started in July of 2004?

5 A. Correct.

6 Q. How old was the Nashville facility at
7 that time or the Nashville Dell office?

8 A. I'm assuming it was about three years
9 old. From my understanding, Dell Nashville
10 started in 2000 or 2001.

11 Q. And what was your initial job?

12 A. Telephone sales in the small/medium
13 business segment, taking calls off the queue.

14 Q. And how long did you stay in that
15 position?

16 A. In that -- in the first position, I
17 stayed there from July until, let's see, it may
18 have been March or April of the next year.

19 Q. And what position did you go to?

20 A. From computer sales, I went to software
21 and peripheral sales, again, in a queue-based
22 environment.

23 Q. And how long were you in that one?

24 A. In that particular role, only a couple
25 of months before moving to another segment of

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1 software and peripherals.

2 Q. And what was the next segment?

3 A. It was called -- it was called -- "the
4 model" is what they called it. It was a new sales
5 model on this sort of experimental thing at the
6 time. And we were responsible for being directly
7 attached to a team of representatives, and we
8 handled all their software and peripheral needs,
9 as opposed -- as opposed to the reps who would
10 call in on the software and peripherals queue,
11 which was the initial -- what I had done
12 initially. So we moved -- I moved from that to
13 this new model, directly attached to a team,
14 although my team was in Oklahoma City.

15 Q. And how long did you do that?

16 A. I did -- well, I did that for a while,
17 but I transitioned from Oklahoma City to
18 Nashville. I did that from, let's say, August of
19 2005 to January or February of 2006, and then I
20 started doing Nashville.

21 Q. When you say you transitioned from
22 Oklahoma City, you were physically in Nashville?

23 A. Physically in Nashville but supporting
24 reps based in Oklahoma City.

25 Q. And beginning in January of 2006, you

1 supported reps based in Nashville?

2 A. Correct.

3 Q. And how long did you stay in that role?

4 A. 'Til September.

5 Q. And then what did you do?

6 A. Or it may actually have been August. I
7 don't know. August or -- I -- then I moved to
8 doing the LOR group, which is the last position
9 that I had, the large opportunity representatives.

10 Q. And that -- you did that up until you
11 left in --

12 A. Uh-huh.

13 Q. -- 2008?

14 A. Uh-huh.

15 Q. Is that a yes?

16 A. Yes. Sorry.

17 Q. That's all right.

18 Who were your manager -- well, first of
19 all, did you have a period of training in your
20 first -- when you first started at Dell?

21 A. First -- first started, yes.

22 Q. And how long did that last?

23 A. About two weeks.

24 Q. Do you remember who the trainer was?

25 A. Jeremy Key.

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1 manager. I only had her for a month.

2 Q. How long was the fellow from Louisville
3 your manager?

4 A. Like two months. He transitioned in
5 and out of RSM. He was RSM and then he was not
6 and then he was again.

7 Q. And RSM is one level up?

8 A. Yeah. Yeah.

9 Q. Your manager would report to an RSM?

10 A. Correct.

11 Q. Now, how did you keep your time when
12 you worked at Dell?

13 A. Through a program called Kronos.

14 Q. And did you enter your own time or was
15 it entered automatically?

16 A. I entered my own.

17 Q. And did that stay the case the whole
18 time you worked at Dell?

19 A. Yes, sir.

20 Q. What were you told about entering time?
21 How were you -- what instructions were you given?

22 A. To go into this program and enter our
23 time.

24 Q. And were you told when -- what times to
25 enter or was that just what you actually felt like

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1 below. One is for incentive pay, see next slide.

2 Have you ever seen anything at any time
3 in your career at Dell that looked anything like
4 this?

5 A. No, sir.

6 Q. Let me ask you to turn back to the page
7 before 1794. It says SR -- SR1B. Do you know
8 what that is?

9 A. Yes.

10 Q. What is that?

11 A. That is the pay grade.

12 Q. Okay. For a sales representative 1B?

13 A. Yes. Correct.

14 Q. And Target Incentive Mix, have you ever
15 seen anything that looked like this kind of slide
16 or this kind of information that was conveyed to
17 you while you were at Dell?

18 A. We have received information about it.
19 I don't know that I've necessarily seen a slide on
20 it.

21 Q. Okay. And it talks about a base pay,
22 incentive pay mix of 80/20 or the slide next talks
23 about 60/40. Were those terms that you were
24 familiar with?

25 A. Yes.

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1 Q. And what does that mean?

2 A. 80/20 refers to your -- your guaranteed
3 versus your at-risk.

4 Q. And the base is guaranteed and the
5 commission is at-risk?

6 A. Correct.

7 Q. And how did commissions work? I mean,
8 what were the base -- at a simple level, what were
9 the basic level -- basic components of commission?

10 A. Your commission was based upon what you
11 sold, essentially, at -- at the basic level. You
12 would have a quota and you would have to meet it,
13 and if you met that quota, you would get X number
14 of dollars, whatever that particular was for that
15 particular pay grade.

16 Q. And I've heard the term "attainment"
17 used with respect to commissions. What does that
18 mean?

19 A. Well, if you -- for instance, if you
20 attain 100 percent, you get 100 percent of your
21 payout. If you attained 100 and, like, 10
22 percent, they would put -- if you were SR1B, it
23 would be a two times kicker. So if you hit 110,
24 you'd get paid out at -- you take the 10 out,
25 multiply it by 2, you'd get paid out at 120. At

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1 Q. And what about when you were on the two
2 software jobs, either the first software job or
3 the model, did you log in to both of those? Would
4 you log in to both of those?

5 A. Yes. You would log into the phone, but
6 your Kronos, again, was something that was left up
7 to you. You didn't necessarily fill out Kronos
8 every day. You would just do it once every two
9 weeks. And that's how it was throughout my -- my
10 tenure there. I would set up reminders usually
11 for the second Friday of every week and make sure
12 that I filled out my Kronos.

13 Q. Did anyone -- did you ever try to
14 fill -- say if you came in at 7:45 to get ready,
15 did you ever put in 7:45 as your entering Kronos
16 time?

17 A. Did I ever?

18 Q. (Nodding head.)

19 A. I suppose it's possible that I did.

20 Q. Did anyone ever correct you for
21 entering too much time in Kronos or not being
22 accurate in the hours that you were working?

23 A. I would never see that, because what
24 would happen is after we would put in our time, it
25 would go over to managers for approval. What they

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1 show you where to go, enter your user name and
2 password, log in, and then put in your time. And,
3 you know, we were told that our hour lunch was
4 already prededucted.

5 Q. Okay. And even though it was
6 prededucted, did you have the ability to alter
7 that?

8 A. You could. You could go in and do --
9 it was -- it was hard to do it, but you could.

10 Q. How did you -- how would you do it?

11 A. You would go in and you would do like
12 no lunch deduct. You would -- there would -- if
13 you look on Page 00291, I believe it was under
14 Transfer, but there was a drop-down and you could
15 do like a lunch deduct on it, like if you did not
16 take a lunch. However, again, most of the time I
17 would just leave it, unless I could for sure say
18 that I only took a 30-minute lunch that particular
19 time, because, again, there was very little
20 logging in and out of the actual time.

21 So if I would go and take a 30-minute
22 lunch and come back or maybe not even take a
23 lunch, just go run to the cafeteria, pick up a
24 sandwich and come back, I would just leave it
25 because I couldn't remember exactly how long I was